CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 36 **JUNE 26, 2002** **NO. 26**

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 5–2002)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of May 2002. The last notice was published in the CUSTOMS BULLETIN on May 29, 2002.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building, 3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927–2330.

Dated: June 6, 2002.

JOANNE ROMAN STUMP,
Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COP0200095	20020507	20220507	NOVELL SMALL BUSINESS SUITE 6.0	NOVELL, INC.	N
COP0200096	20020507	20210507	NETWARE 6.0	NOVELL, INC.	N
COP0200097	20020507	20220507	LITECUBES NOVELTY ITEM	LITECUBES LLC.	N
COP0200098	20020507	20210507	KMC 2001 SERIES 7-LILIES II	KMC ENTERPRISE INC.	N
COP0200099	20020507	20210507	KMC 2001 SERIES 6-LILIES I	KMC ENTERPRISE INC.	N
COP0200100	20020507	20210507	KMC 2001 SERIES 15 (46 DESIGNS)-EARTHENWARE	KMC ENTERPRISE INC.	N
COP0200101	20020507	20200507	TOFU PIG AUGUST 1998 COLLECTION	JEFF WONG	N
COP0200102	20020508	20210508	SPIDERMAN STYLE GUIDE	SONY PICTURES ENTERTAINMENT INC.	N
COP0200103	20020509	20220509	SUPERGLOVES GRAPHIC DESIGN	MEXPO INTERNATIONAL INC.	N
COP0200104	20020523	20220523	TOY CHAINSAW	LANARD TOYS LTD.	N
COP0200105	20020523	20220523	TOY JACK HAMMER	LANARD TOYS LTD.	N
COP0200106	20020523	20220523	TOY HEDGE TRIMMER	LANARD TOYS LTD.	N
COP0200107	20020523	20220523	TOY WEED TRIMMER	LANARD TOYS LTD.	N
COP0200108	20020523	20220523	CHATTER PALS - PIG	D & V CO., LTD.	N
COP0200109	20020523	20220523	CHATTER PALS - PENGUIN	D & V CO. LTD.	N
COP0200110	20020523	20220523	CHATTER PALS - FROG	D & V CO., LTD.	N
COP0200111	20020523	20220523	CHATTER PALS - LIPS	D & V CO., LTD.	N
COP0200112	20020523	20220523	CHATTER PALS - COW	D & V CO., LTD.	N
COP0200113	20020523	20220523	CHATTER PALS - GORILLA	D & V CO., LTD.	N
SUBTOTAL RECORDATION TYPE			19		
TMK0200283	20020507	20120202	BEATRIX POTTER	FREDERICK WARNE & CO., INC.	N
TMK0200284	20020510	20110828	OVAL DESIGN	KARSTEN MANUFACTURING CORP.	N
TMK0200285	20020510	20061007	10CR	PETERSON MANUFACTURING CO., INC.	N
TMK0200286	20020510	20111211	MICK MICHEYL	NEW AGE PERFUMES, INC.	N
TMK0200287	20020515	20080728	MULTI-CART AND DESIGN	GARY-MICHAEL DAHL	N
TMK0200288	20020515	20111002	ROCK N' ROLLER	GARY-MICHAEL DAHL	N
TMK0200289	20020516	20050822	AUSSIE LAMB BRAND PRODUCT OF AUSTRALIA AND DESIGN	FOODCOMM INTERNATIONAL INC.	N
TMK0200290	20020516	20100731	TEXAS RANGERS	TEXAS RANGERS BASEBALL PARTNERS	N
TMK0200291	20020516	20110115	RACING DYNAMICS	RACING DYNAMICS INC.	N
TMK0200292	20020516	20130921	MISCELLANEOUS DESIGN	BALTIMORE ORIOLES LTD PARTNERSHI	N
TMK0200293	20020516	20031130	MARLINS	FLORIDA MARLINS BASEBALL CLUB	N
TMK0200294	20020516	20060619	COLORADO ROCKIES AND DESIGN	COLORADO ROCKIES BASEBALL CLUB,	N
TMK0200295	20020516	20041115	PHILLIES AND DESIGN	THE PHILLIES, A PENN LTD PARTNER	N
TMK0200296	20020516	20060702	D AND DESIGN	DETROIT TIGERS, INC.	N
TMK0200297	20020516	20110828	ANGELS AND DESIGN	ANAHEIM ANGELES, LTD. PARTNERSHI	N
TMK0200298	20020516	20061008	S AND DESIGN	THE BASEBALL CLUB OF SEATTLE, LP	N
TMK0200299	20020516	20041129	MISCELLANEOUS DESIGN (CAMPASS AND BASEBALL DESIGN)	THE BASEBALL CLUB OF SEATTLE, LP	N
TMK0200300	20020517	20091003	CLEAR CALL	COBRA ELECTRONICS CORPORATION	N
TMK0200301	20020517	20090502	INTENNA	COBRA ELECTRONICS CORPORATION	N
TMK0200302	20020517	20090321	COBRA (DYNASCAN)	COBRA ELECTRONICS CORPORATION	N
TMK0200303	20020517	20090221	COILED SNAKE DESIGN	COBRA ELECTRONICS CORPORATION	N
TMK0200304	20020517	20051022	COBRA ELECTRONIC DEVICES	COBRA ELECTRONICS CORPORATION	N
TMK0200305	20020517	20050129	ELECTROINK	INDIGO N.V.	N
TMK0200306	20020520	20111113	C (STYLIZED)	CHICAGO NATIONAL LEAGUE BALL CLU	N
TMK0200307	20020520	20090504	A (STYLIZED)	AZPB LIMITED PARTNERSHIP	N
TMK0200308	20020520	20050214	SEATTLE MARINERS AND DESIGN	THE BASEBALL CLUB OF SEATTLE, LP	N
TMK0200309	20020520	20030601	KC ROYALS AND DESIGN	KANSAS CITY ROYALS BASEBALL CORP	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0200310	20020520	20021022	GIANTS	SAN FRANCISCO BASEBALL ASSOCIATE	N
TMK0200311	20020520	20021110	TWINS	MINNESOTA TWINS PARTNERSHIP	N
TMK0200312	20020521	20090309	SAVIN	SAVIN CORPORATION	N
TMK0200313	20020521	20070422	SAVIN SHREDMAN	SAVIN CORPORATION	N
TMK0200314	20020521	20061231	SHREDMAN	SAVIN CORPORATION	N
TMK0200315	20020521	20101204	PRISM	SAVIN CORPORATION	N
TMK0200316	20020521	20081129	SAVINFAX	SAVIN CORPORATION	N
TMK0200317	20020521	20080816	SAVIN	SAVIN CORPORATION	N
TMK0200318	20020521	20030726	LANDA PROCESS	SAVIN CORPORATION	N
TMK0200319	20020521	20071010	SAVIN	SAVIN CORPORATION	N
TMK0200320	20020521	20041103	ELECTROMIX	SAVIN CORPORATION	N
TMK0200321	20020521	20110619	INSURRECTION	Y.Z.Y. INC.	N
TMK0200322	20020521	20111016	POKE BALL DESIGN	NINTENDO OF AMERICA INC.	N
TMK0200323	20020521	20120122	POKE BALL DESIGN	NINTENDO OF AMERICA INC.	N
TMK0200324	20020521	20120108	TECTRON AND DESIGN	WATCH CLUB INC.	N
TMK0200325	20020521	20120126	LACOSTE	LACOSTE ALLIGATOR S.A.	N
TMK0200326	20020521	20060227	LA VENCEDORA	RIA DISTRIBUTING	N
TMK0200327	20020522	20060213	S & W AND DESIGN	DEL MONTE CORPORATION	N
TMK0200328	20020522	20060416	S & W	DEL MONTE CORPORATION	N
TMK0200329	20020522	20061022	SUNFRESH	DEL MONTE CORPORATION	N
TMK0200330	20020523	20090615	SPACE BANGER	FIREWORKS OVER AMERICA	N
TMK0200331	20020523	20050815	ROCK-N-ROLL	FIREWORKS OVER AMERICA	N
TMK0200332	20020523	20090406	ZOOMERS	FIREWORKS OVER AMERICA	N
TMK0200333	20020523	20111113	ZDZ	RC SHOWCASE INC.	N
TMK0200334	20020523	20110430	RED SOX	BOSTON RED SOX BASEBALL CLUB LP	N
TMK0200335	20020523	20100515	BRAVES AND DESIGN	ATLANTA NATIONAL LEAGUE BASEBALL	N
TMK0200336	20020523	20060210	YANKEES AND DESIGN	NEW YORK YANKEES PARTNERSHIP, LP	N
TMK0200337	20020523	20111023	METS AND DESIGN	STERLING DOUBLEDAY ENTERPRISES	N
TMK0200338	20020523	20111204	NY (STYLIZED)	STERLING DOUBLEDAY ENTERPRISES	N
TMK0200339	20020523	20110305	METS	STERLING DOUBLEDAY ENTERPRISES	N
TMK0200340	20020523	20101128	A (STYLIZED)	AZPB LIMITED PARTNERSHIP	N
TMK0200341	20020523	20090302	DEVIL RAYS	TAMPA BAY DEVIL RAOYS, LTD., LP	N
TMK0200342	20020523	20110327	DEVIL RAYS	TAMPA BAY DEVIL RAYS, LTD., LP	N
TMK0200343	20020523	20110514	TCB	IFASTGROUPE AND COMPANY	N
TMK0200344	20020523	20110324	WOODSMAN	TRUSERV CORP, DBA TRUE VALUE MFG	N
TMK0200345	20020524	20111225	KNUSH	HOUSE OF MOHAN CORPORATION	Y
TMK0200346	20020524	20110327	DESIGN	HOUSE OF MOHAN CORPORATION	Y
TMK0200347	20020530	20060813	GRIFFITH GRAY	ST. JOHN KNITS,	N
TMK0200348	20020530	20081215	SANTANA	ST. JOHN KNITS, INC.	N
TMK0200349	20020530	20100404	SJ (STYLIZED)	ST. JOHN KNITS, INC.	N
TMK0200350	20020530	20080407	SJ (STYLIZED)	ST JOHN KNITS, INC.	N
TMK0200351	20020530	20081229	ST. JOHN	ST. JOHN KNITS	N
TMK0200352	20020530	20091005	ST. JOHN	ST. JOHN KNITS, INC.	N
TMK0200353	20020530	20090323	MARIE GRAY	ST. JOHN KNITS, INC.	N
TMK0200354	20020530	20080512	ST. JOHN	ST. JOHN KNITS, INC.	N
TMK0200355	20020530	20090518	ST. JOHN	ST. JOHN KNITS, INC.	N
TMK0200356	20020530	20081006	ST. JOHN	ST. JOHN KNITS, INC.	N

SUBTOTAL RECORDATION TYPE 74

RELOCATION OF OFFICE OF REGULATIONS AND RULINGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of change in office location.

SUMMARY: The Office of Regulations and Rulings of the U.S. Customs Service is relocating on or about June 7–10, 2002, from the Ronald Reagan Building and International Trade Center to the U.S. Mint Annex Building at 799 9th Street, NW, Washington, DC. All correspondence directed to the Office of Regulations and Rulings, including ruling requests and comments regarding pending Customs regulatory proposals, should continue to be sent to the Ronald Reagan Building and International Trade Center address. However, anyone wishing to view comments on regulatory projects will need to come to the new location. The phone numbers of the Office of Regulations and Rulings will also change. This document gives notice of the new location and phone numbers.

FOR FURTHER INFORMATION CONTACT: Joseph Clark, Regulations Branch (202–572–8768).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Office of Regulations and Rulings (OR&R) of the U.S. Customs Service is relocating on or about June 7–10, 2002, from the Ronald Reagan Building and International Trade Center to the U.S. Mint Annex Building at 799 9th Street, NW, Washington, DC. Anyone wishing to send correspondence to the Office of Regulations and Rulings, including ruling requests and comments regarding pending Customs regulatory proposals, should continue to address the correspondence to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC, 20229, with either the Regulations Branch or other appropriate branch name inserted into the address.

Viewing Comments

As of June 10, 2002, anyone wishing to view comments that were addressed to the Regulations Branch of Customs on a proposal published in the Federal Register should come to the new OR&R location specified in the preceding paragraph. It is highly recommended that, during the week of June 10, 2002, a person first call Joseph Clark at 202–572–8768 to schedule an appointment to view the comments.

Phone Numbers

The phone numbers for the Office of Regulations and Rulings as of June 8, 2002, are as follows:

Assistant Commissioner, OR&R—(202) 572–8700
Operational Oversight Division—(202) 572–8820
International Agreements Staff—(202) 572–8800

International Trade Compliance Division—(202) 572–8733
Regulations Branch—(202) 572–8760
Penalties Branch—(202) 572–8750
Entry Procedures and Carriers Branch—(202) 572–8730
Intellectual Property Rights Branch—(202) 572–8710
Value Branch—(202) 572–8740
Disclosure Law Branch—(202) 572–8720
Commercial Rulings Division—(202) 572–8830
Duty and Refund Determination Branch—(202) 572–8770
Textile Branch—(202) 572–8790
Special Classification and Marking Branch—(202) 572–8810
General Classification Branch—(202) 572–8780

Dated: June 5, 2002.

SANDRA L. BELL,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

[Published in the Federal Register, June 10, 2002 (67 FR 39787)]

CUSTOMS COBRA FEES ADVISORY COMMITTEE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This document announces the date, time and location of the first meeting of the U.S. Customs COBRA Fees Advisory Committee. The meeting is open to the public.

DATES: The first meeting of the U.S. Customs COBRA Fees Advisory Committee will be held on June 28, 2002, from 10:00 a.m. until 12:00 p.m., in room 6.4–B of the Ronald Reagan Building located at 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Interested parties must provide Customs with notice of their intent to attend the meeting by June 25, 2002. Notice may be provided to Carlene Warren at (202) 927–1391 or via email at *Carlene.warren@customs.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Carlene Warren, U.S. Customs Service, Office of Field Operations, Passenger Programs, at (202) 927–1391 or via email at *Carlene.warren@customs.treas.gov.*

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c), as amended by the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106–36), directs

the Commissioner of Customs to establish an advisory committee whose membership consists of representatives from the airline, cruise ship, and other transportation industries who may be subject to fees under 19 U.S.C. 58c.

The Committee will advise the Commissioner of Customs on issues relating to inspection services performed by the Customs Service, including issues pertaining to the time periods during which inspections should be performed, the proper number and deployment of inspection officers, and the amount of any proposed fees.

On February 8, 2000, Customs published a notice in the Federal Register (65 FR 6254) announcing the establishment of a COBRA Fee Advisory Committee, the criteria for membership, and requesting membership applications. In a notice published in the Federal Register (65 FR 38884) on June 22, 2000, Customs set forth amended criteria for membership in the Customs COBRA Fees Advisory Committee and requested that new applications for membership be submitted. A subsequent notice published in the Federal Register (65 FR 69993) on November 21, 2000, again amended membership criteria and extended the time within which membership applications were to be submitted.

This notice announces the first COBRA Fee Advisory Committee meeting. The meeting is scheduled for June 28, 2002, from 10:00 a.m. until 12:00 p.m., in room 6.4–B of the Ronald Reagan Building located at 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

The agenda for this meeting will cover issues pertaining to the performance of Customs inspection services. The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members and Customs and Treasury Department staff. Interested parties, other than Advisory Committee members, who wish to attend the meeting should contact Carlene Warren by June 25, 2002, at (202) 927–1391 or via email at *Carlene.warren@customs.treas.gov.*

Dated: June 11, 2002.

DOUGLAS M. BROWNING,
Deputy Commissioner of Customs.

[Published in the Federal Register, June 14, 2002 (67 FR 40983)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, June 12, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

The version of Headquarters Ruling 115072 which was published in the CUSTOMS BULLETIN and Decisions Vol. 36 No. 23, June 5, 2002, inadvertently deleted the list of other Headquarters Ruling letters that Customs has identified to be revoked or modified with respect to their findings that certain persons transported on a vessel would not be considered passengers under 19 CFR 4.50(b). The following is a corrected version of Headquarters Ruling 115072 which lists the other headquarters rulings that are modified or revoked:

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

VES–3–RR:IT:EC 115072RSD
Category: Carriers

MR. ROBB R. MAASS
321 Royal Poinciana Plaza, South
Post Office Box 431
Palm Beach, FL 33480–0431

Re: Definition of passenger; Yachts; Charitable and political organizations; Reimbursement for expenses; 46 U.S.C. App. 289; 19 CFR 4.50(b).

DEAR MR. MAASS:

In our ruling number 113878 of April 1, 1997, we found that certain persons transported aboard your client's Cayman Islands documented pleasure vessel were not considered to be passengers as that word is defined in section 4.50(b) of the Customs Regulations (19 CFR 4.50(b)). We have reconsidered this position and now believe it to be incorrect.

Facts:

At the time we issued our 1997 ruling (HQ 113878) we recited the following factual background. A corporation organized under the laws of the British Virgin Islands owns a

163-foot Turkish-built yacht which is registered in the Cayman Islands. It is stated that the vessel will be arriving in the United States during the month of April. The corporate owner desires to offer the vessel for the use of political and charitable organizations in this country as a venue for fund raising events. The owner would not receive compensation from the organizations utilizing the vessel, but may be compensated for the cost of food and entertainment. It is anticipated that the company may seek to obtain a charitable tax deduction for the value of services provided. During some of the events it is likely that the vessel would remain dockside, but during others the vessel would be underway and would likely remain within United States waters.

Issue:

Whether persons transported aboard a foreign-flag pleasure vessel by political and charitable organizations under circumstances as described above would be considered to be passengers within the meaning of section 4.50(b) of the Customs Regulations (19 CFR 4.50(b)).

Law and Analysis:

The Act of June 19, 1886, as amended (24 Stat. 81; 46 U.S.C. App. § 289, sometimes called the coastwise passenger law), provides that:

> No foreign vessel shall transport passengers between ports or places in the United States either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and landed.

For your general information, we have consistently interpreted this prohibition to apply to all vessels except United States-built, owned, and properly documented vessels (see 46 U.S.C. §§ 12106, 12110, 46 U.S.C. App. § 883, and 19 C.F.R. § 4.80).

The definition of "passenger" for purposes of enforcement of the coastwise laws is contained in section 4.50(b) of the Customs Regulations (19 CFR 4.50(b)), and includes any person not connected with the ownership, operation, navigation or business of the vessel upon which transportation is provided.

The definition of a prohibited "passenger" in this area has, been the subject of varying interpretations as demonstrated in administrative rulings. One early ruling issued by the Department of Commerce, Bureau of Navigation (General Letter No. 117, dated May 20, 1916), interpreted the term for purposes of the Steamboat-Inspection Laws, finding that a stockholder of the corporation owning a vessel is a passenger when transported aboard that vessel. Similarly, in directly confronting the question in relation to 19 CFR 4.50(b), Customs stated in a letter of August 29, 1960 (MA 217.1), that:

> * * * newspapermen or cruise agents who merely accompany the vessel for publicity purposes and cruise passage sales promotion are not persons connected with the operation, navigation, ownership, or business of the vessel within the meaning of section 4.50(b) of the Customs Regulations. The activity of the persons involved is only remotely or indirectly connected with the operation or business of the vessel rather than being direct and immediate as is contemplated by the regulations.

In HQ 113304, dated January 11, 1995 we determined that the existing or potential clients of the corporate owner were passengers within the meaning of 46 U.S.C. App. 289 and 19 CFR 4.50(b). We noted that the clients were not connected with the operation, navigation, ownership or business of the vessel. Accordingly, we ruled that those individuals could not be transported from one coastwise point to another coastwise point as was proposed.

Similarly, in this instance, it is now our view that the individuals who are transported on the vessel during fund raising events of political and charitable organizations are not directly and substantially connected with the operation, navigation, ownership or business of the vessel. Thus, such individuals would be considered passengers even though no direct monetary consideration is given to the vessel owner. Accordingly, for these individuals, cruises entirely within U.S. territorial waters, cruises between U.S. ports, and cruises between U.S. ports via nearby foreign ports would be prohibited. However, the activities described which do not involved transporting individuals between places in the United States, such as receptions while the vessel is moored or anchored either at a U.S. port or within the U.S. territorial waters would not be in violation of the coastwise laws.

Holding:

Headquarters Ruling Letter 113878 is hereby revoked. In addition, Customs has also identified the following rulings to be modified or revoked with respect to their findings

that certain persons transported on a vessel would not be considered passengers under 19 CFR 4.50(b):

1) Headquarters Ruling Letter 114343 dated June 18, 1998.
2) Headquarters Ruling Letter 113878 dated April 1, 1997.
3) Headquarters Ruling Letter 113017 dated February 9, 1994.
4) Headquarters Ruling Letter 109781 dated November 7, 1988.
5) Headquarters Ruling Letter 108501 dated August 29, 1986.
6) Headquarters Ruling Letter 108278 dated April 2, 1986.
7) Headquarters Ruling Letter 108239 dated March 14, 1986.
8) Headquarters Ruling Letter 108147 dated March 3, 1986.
9) Headquarters Ruling Letter 107028 dated October 18, 1984.
10) Headquarters Ruling Letter 105612 dated May 19, 1982.
11) Headquarters Ruling Letter 104276 dated October 22, 1979.
12) Headquarters Ruling Letter 102756 dated April 7, 1977.
13) Treasury Decision 69–120(4) dated April 30, 1969.

In accordance with 19 U.S.C. 1625(c) this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Persons who are transported aboard a foreign-flag pleasure vessel by political and charitable organizations would be considered passengers within the meaning of section 4.50(b) of the Customs Regulations (19 CFR 4.50). Consequently, the carriage of such persons aboard the vessel in question for the purpose of fund raising for the charitable and political organizations would be in violation of 46 U.S.C. App. 289 even though there is no monetary consideration exchanged for the voyage. The issue of the possibility of charitable tax deductions surrounding the proposed activities is a matter within the jurisdiction of federal, state, and local taxing agencies.

LARRY L. BURTON,
Acting Director,
International Trade Compliance Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A CHECKBOOK ORGANIZER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of and treatment relating to tariff classification of a checkbook organizer.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a checkbook organizer and to revoke any treatment previously accorded by Customs to substantially identical merchandise.

DATE: Comments must be received on or before July 26, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textiles Branch (202) 572–8811.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI") became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that, in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a checkbook organizer. Although in this notice Customs is specifically referring to one ruling, that being New York Ruling Letter (NY) E82903, this notice covers any rulings relating to the specific issue of tariff classification set forth in NY E82903, which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, an internal advice memorandum or decision, or a protest review decision) on the issue subject to this notice, should advise Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs intends to revoke any treatment previously accorded by the Customs Service for substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar issue, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in the classification of substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise, or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reason-

able care on the part of the importer or its agents for importations subsequent to the effective date of the final decision on this notice.

In NY E82903, issued June 16, 1999, a multi-component article identified as a "Checkbook Organizer" was classified as a set in subheading 4202.32.2000, HTSUSA, which provides, in part, for "* * * wallets * * *: Articles of a kind normally carried in the pocket or in the handbag: With outer surface of sheeting of plastic or of textile materials: With outer surface of sheeting of plastic: Other." NY E82903 is set forth as "Attachment A" to this document.

The outermost component of the article at issue is of a trifold design with a hook and loop front closure. The component is made with an outer material of unbacked polyvinyl chloride (PVC) plastic sheeting and inner layers consisting of a paperboard stiffener and foam plastic padding. The interior of the component is fitted with two flat, translucent plastic sleeves, into which are inserted a checkbook register, a small notebook, and a small telephone/address book. The interior also features two cardholder sleeves (each with a paper insert with lines labeled for the entry of personal information) and a tubular shaped pen holder into which is inserted a retractable ball point pen.

The components were imported together, packed for retail sale, and found to comprise a "set" pursuant to General Rule of Interpretation (GRI) 3(b), with the PVC "wallet" imparting the set's essential character. It is Customs position that the "wallet" component does not have the character of, and is not similar to, wallets or other containers enumerated in heading 4202, HTSUSA, which have in common the essential characteristics and purposes of organizing, storing, protecting and carrying various items. The outer component, instead, is similar to a cover for a checkbook and is classifiable under heading 3926, HTSUSA, which covers other articles of plastics. The essential character of the set is imparted by the checkbook register, and the "Checkbook Organizer" is classified in subheading 4820.10.4000, HTSUSA, which provides, in part, for "* * * Registers, account books * * * order books, receipt books * * * and similar articles: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), Customs intends to revoke NY E82903 and any other rulings not specifically identified which involve identical or substantially identical merchandise, to reflect the proper classification of the "Checkbook Organizer" according to the analysis in Proposed Headquarters Ruling Letter (HQ) 963397, which is set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), Customs intends to revoke any treatment that Customs may have previously accorded to substantially identical merchandise.

Before taking this action, consideration will be given to any written comments timely received.

Dated: June 11, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 16, 1999.

CLA–2–42:RR:NC:341 E82903
Category: Classification
Tariff No. 4202.32.2000

MR. ERIK D. SMITHWEISS
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN LLP
245 Park Avenue, 33rd Floor
New York, NY 10167

Re: The tariff classification of a wallet from China.

DEAR MR. SMITHWEISS:

In your letter dated May 28th, 1999, on behalf of Archer Worldwide, Inc., you requested a tariff classification ruling for a "Checkbook Organizer".

The sample is identified as a "Checkbook/Organizer". It is of a tri-fold design with a hook and loop closure on the front flap. The container is manufactured of an outer material of unbacked Polyvinyl Chloride (PVC) sheeting, a paperboard stiffener and foam padding. The interior is fitted with a pen in a holder of PVC, two open slots of clear PVC sheeting and two permanently affixed clear vinyl wings for identification or credit cards. A bound check register, writing pad and address book are inserted into the open slots. One slot is dedicated to hold coupons or receipts. You have stated that the sample will be imported from China. It is assumed it will be presented packed for retail sale.

The container is more than a simple billfold checkbook cover. It is of a kind similar to a billfold or a clutch wallet. The combination of the container with the pads and pen forms a set provided by General Rule of Interpretation 3 (b), HTSUSA. The set is classified according to that which imparts the essential character.

The wallet like billfold is classifiable in HTS subheading 4202.32.2000; the memo pad in HTS subheading 4820.10.2020; the address book in HTS subheading 4820.10.2010; the register in HTS subheading 4820.10.4000; and the pen in HTS subheading 9608.10.0000. The PVC wallet imparts the essential character.

The applicable subheading for the PVC wallet will be 4202.32.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of a kind normally carried in the pocket or the handbag * * * with outer surface of sheeting of plastic, other. The rate of duty will be 20% ad valorem.

Your sample is being returned as requested.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 212–637–7091.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 963397 GGD
Category: Classification
Tariff No. 4820.10.4000

ERIK D. SMITHWEISS, ESQUIRE
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN LLP
245 Park Avenue, 33rd Floor
New York, NY 10167–3397

Re: Revocation of NY E82903; "Checkbook Organizer;" GRI 3(b) Set including Checkbook Register, Telephone/Address Book, Notebook, Card/Photo Holders, Pen, and Trifold Cover for Checkbook; Not Wallet of Heading 4202.

DEAR MR. SMITHWEISS:

This is in response to your request dated July 29, 1999, on behalf of your client, Archer Worldwide, Inc., for reconsideration of New York Ruling Letter (NY) E82903, issued June 16, 1999, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a multi-component article manufactured in China. A sample has been submitted for our examination. We have reviewed NY E82903 and have found the ruling to be in error. Therefore, this ruling revokes NY E82903. We regret the delay in responding.

Facts:

In NY E82903, the multi-component article identified as a "Checkbook Organizer" was classified as a set in subheading 4202.32.2000, HTSUSA, which provides, in part, for "* * * wallets * * *: Articles of a kind normally carried in the pocket or in the handbag: With outer surface of sheeting of plastic or of textile materials: With outer surface of sheeting of plastic: Other." The sample article's outermost component, whether deemed to be a wallet or a cover for a checkbook, is of a trifold design with a hook and loop front closure. The component is made with an outer material of unbacked polyvinyl chloride (PVC) plastic sheeting, and inner layers consisting of a paperboard stiffener and padding of foam plastic. In the closed position, the checkbook organizer measures approximately 6¼ inches in width by 4 inches in height by ½ of an inch in depth. When opened, the article's width remains the same, but it measures approximately 9½ inches in height. The interior of the article is fitted with two flat, translucent plastic sleeves, each of which extends full-width and measures approximately 3¼ inches in height.

The lower of the two sleeves is designed for the insertion of a staple-bound, 16 page checkbook register with 3 year calendar (included), or a checkbook (which is not included). The checkbook register measures approximately 6 inches in width by 3 inches in height. Loosely overlying both the lower sleeve and the checkbook register, and permanently attached by their top edges to the lower of the article's two spines, are two cardholder sleeves. Each cardholder sleeve contains a paper insert, one of which reads "Medical Card" and the other of which reads "Identification." The reverse sides of the inserts contain lines that are labeled for the entry of personal information.

The upper of the two flat, plastic sleeves lies on the interior, middle portion of the trifold component and contains a paper insert which reads "Receipts & Coupon Pocket." Overlying this paper insert, and slipped side by side into the flat plastic sleeve, are the back covers of two staple-bound, 16 page inserts, each of which measures approximately 3 inches square. One of the inserts is a telephone/address book and the other is a pad or notebook of blank paper. Above the upper sleeve, in the crease of the upper spine, is a tubular shaped pen holder of plastic sheeting, into which is inserted a retractable ball point pen. The uppermost or "fold-over" portion of the trifold article (above the pen and pen holder) extends full-width (6¼ inches), measures approximately 1¼ inch in height, and features only the "loop" segment of the article's hook and loop closure which, in the closed position, contacts the "hook" segment on the outer surface of the bottom portion.

It was determined in NY E82903 that, if imported separately, the components of the "Checkbook Organizer" would be individually classified in various subheadings, i.e., the address book in subheading 4820.10.2010, HTSUSA, the blank notebook in subheading 4820.10.2020, HTSUSA, the register in subheading 4820.10.4000, HTSUSA, the pen in

subheading 9608.10.0000, and the wallet in subheading 4202.32.2000, HTSUSA. The components were imported together, however, packed for retail sale. The complete article was found to comprise a "set" pursuant to General Rule of Interpretation (GRI) 3(b), with the PVC "wallet" imparting the set's essential character.

Issue:

Whether the "Checkbook Organizer" is properly classified in subheading 4202.32.2000, HTSUSA, which covers, in part, "* * * wallets * * * and similar containers. * * *;" in subheading 3926.90.9880, HTSUSA, a basket provision which covers other articles of plastics; or under one of the provisions of heading 4820, HTSUSA, which covers, in part, "Registers * * * notebooks * * * diaries and similar articles * * * book covers (including cover boards and book jackets) of paper or paperboard."

Law and Analysis:

Classification under the HTSUSA is made in accordance with the GRI. GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Among other merchandise, chapter 48, HTSUSA, covers articles of paper or of paperboard. Note 1(h) to chapter 48, HTSUSA, states that "[t]his chapter does not cover: Articles of heading 4202 (for example, travel goods)." As noted above, some of the items covered by heading 4820 are registers, notebooks, diaries and similar articles, book covers and other articles of stationery, of paper or paperboard. The EN to heading 4820 indicate that the heading covers various articles of stationery including (in addition to the examples named in the text of the heading) notebooks of all kinds, address books, and books, pads, etc., for entering telephone numbers. It is clear that several of the checkbook organizer's components are articles of stationery that are classifiable under heading 4820, HTSUSA. To examine the characteristics of the component in which all of the other components are fitted, we next look to heading 4202, HTSUSA.

Among other goods, heading 4202, HTSUSA, provides for trunks, briefcases, wallets, and similar containers. The exemplars named in heading 4202 have in common the purpose of organizing, storing, protecting, and carrying various items. EN (c) to heading 4202 states, in part, that the heading does not cover:

> Articles which, although they may have the character of containers, are not similar to those enumerated in the heading, for example, book covers and reading jackets, file-covers, document-jackets * * * etc., and which are wholly or mainly covered with leather, sheeting of plastics, etc. Such articles fall in heading 4205 if made of (or covered with) leather or composition leather, and in other Chapters if made of (or covered with) other materials. [Emphasis in original.]

For purposes of the outermost component at issue, such "other Chapters" include Chapter 39, HTSUSA, which provides for "Plastics and Articles Thereof." Heading 3926, HTSUSA, covers "Other articles of plastics and articles of other materials of headings 3901 to 3914." Although the language of the heading does not enumerate specific exemplars, the EN to heading 3926 state, in pertinent part, that the heading covers articles of plastics which include:

> * * * file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or glueing together sheets of plastics.

In Headquarters Ruling Letter (HQ) 960835, dated June 29, 1999, this office classified a bifold cover (for a checkbook) with an exterior layer of cellular plastics not backed with textile fabric in subheading 3926.90.9880, HTSUSA. Like the "wallet" at issue herein, the interior sides of the bifold cover each had plastic slots or sleeves into which a checkbook or other types of books or pads could be inserted. To determine whether that article was similar to the containers enumerated in heading 4202, we first acknowledged that checkbook covers bear some resemblance to wallets of heading 4202, HTSUSA. Six digit subheadings

4202.32, 4202.31, and 4202.39, HTSUSA, cover articles of a kind normally carried in the pocket or handbag. The pertinent subheading EN states that:

> These subheadings cover articles of a kind normally carried in the pocket or in the handbag and include spectacle cases, note-cases (bill-folds), wallets, purses, key-cases, cigarette-cases, cigar-cases, pipe-cases and tobacco-pouches.

In HQ 960835, it was noted that on June 21, 1995, this office had published a General Notice in the CUSTOMS BULLETIN, Volume 29, Number 25, concerning goods identified as "Wallets on a String." The attributes of articles of a kind normally carried in the pocket or in the handbag were discussed. The notice stated in pertinent part that:

> Such articles include wallets, which may be described as *flat* cases or containers fitted to hold credit/identification cards, paper currency, coins and in some instances a checkbook holder. Articles meeting this description which also possess a detachable carrying strap have been classified as flatgoods.

In recounting that checkbook covers were not normally fitted to hold paper currency or coins, and that wallets could be fitted to hold checkbook holders, we found indications that wallets and checkbook covers are separate and distinct commodities. We further determined that, unlike wallets, checkbook covers are specifically designed to accommodate articles of stationery, e.g., a book of checks and a register for recording details concerning each check written. We found that the bifold checkbook cover was not similar to a wallet or other containers enumerated in heading 4202, and was not classifiable in that heading.

In this case, the outermost component is essentially a protective cover for the articles of stationery it incorporates (a check register, a telephone address book, and a notebook) and a pen which renders the articles of stationery more useful. Although this component is also capable of holding a book of checks, the usefulness of such books depends upon their printed customized information (e.g., name, address, and other information pertinent to both the account owner and the financial institution) and checkbooks are not normally included in imported sets of this type. Although the outer component at issue is fitted with two small sleeves for cards or photos (features normally associated with a wallet), the two larger sleeves are not suitable fittings for carrying coins and are not designed or intended to withstand the repetitive manipulation associated with carrying currency. We thus find that the article is similar to a cover for a checkbook and, although it is not composed of paper or paperboard, to other articles of stationery. The component is not similar to a wallet or other containers of heading 4202, HTSUSA. If separately imported, the cover would be classified in subheading 3926.90.9880, HTSUSA.

The legal notes to chapter 48, HTSUSA, do not exclude covers found to be classifiable under heading 3926, HTSUSA. While we agree with the determination in NY E82903 that the group of components comprises a set, we note that three of the five separable components are classifiable under heading 4820, while the other two components (i.e., the pen and the cover) are designed to write on, and to cover/protect, the articles of stationery, respectively. In light of the roles played by the stationery, it is clear that the essential character of the set will be imparted by a component that is classifiable under heading 4820, HTSUSA. Classification of the complete good cannot be determined by GRI 1, however, i.e., according to the terms of heading 4820, because the components are classifiable in different subheadings of that heading.

GRI 6 addresses the classification of goods that are classifiable in different subheadings within the same heading. In pertinent part, GRI 6 states:

> For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules [i.e., GRI 1 through GRI 5], on the understanding that only subheadings at the same level are comparable. * * *

At the six digit subheading level, each of the three stationery components is classifiable in subheading 4820.10, HTSUSA, which provides, in pertinent part, for: "* * * Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles." (Emphasis added.)

We continue classification analysis of the three components using the remaining applicable GRI. In pertinent part, GRI 2(b) states:

> The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

GRI 3(a) directs that the headings [and by operation of GRI 6 above, the subheadings] are regarded as equally specific when they each refer to part only of * * * the items in a set

put up for retail sale. GRI 3(a) requires that the subheadings be regarded as equally specific despite any disparity in their texts.

At the eight digit subheading level, the three components are classifiable in two different subheadings, i.e., 4820.10.20, HTSUSA, which provides for "* * * Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles," and 4820.10.40, HTSUSA, the text of which reads "Other." Since the exemplars of six digit subheading 4820.10, HTSUSA, are completely provided for in only two, eight digit subheadings, subheading 4820.10.40, HTSUSA, actually provides for all of the named exemplars of subheading 4820.10, that are not named in subheading 4820.10.20, HTSUSA. By process of elimination, the "Other" articles provided for in subheading 4820.10.40, HTSUSA, are "Registers, account books, order books, receipt books and similar articles." (Emphasis added.)

We next look to GRI 3(b), which states, in part, that:

> * * * goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

At GRI 3(b), the checkbook organizer set is classified as if it consists of the component or components that give the set its essential character. The terms of the competing subheadings might suggest that the provision which includes two of the three components more specifically describes the set, but neither the notebook nor the address book are more specific than the register, and neither of the two components appears to give the complete set its essential character. We therefore look next to Explanatory Note VIII to GRI 3(b), which states:

> The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In viewing the nature of the checkbook organizer and the role of the remaining stationery components to the use of the set, we are mindful that although the notebook and the address book are classifiable in the same eight digit subheading, each is only one half the size of the checkbook register. We note that the cover of the "checkbook organizer" conforms in size to the checkbook register, and that it is able and likely intended to incorporate a personalized checkbook, the individual checks of which a checkbook register is designed and intended to record and describe. We thus find that the checkbook register imparts the set's essential character, and that the checkbook organizer is classified in subheading 4820.10.4000, HTSUSA. For additional Customs rulings classifying sets of similar components, see NY C87832 (dated May 19, 1998), NY C81905 (dated November 25, 1997), and NY 812474 (dated July 18, 1995).

Holding:

NY E82903, dated June 16, 1999, is hereby revoked.

The trifold article identified as the "Checkbook Organizer" is classified in subheading 4820.10.4000, HTSUSA, which provides, in part, for "* * * Registers, account books * * * order books, receipt books * * * and similar articles: Other." The general column one duty rate is free.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF GUN BOOT SKINS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation of a tariff classification ruling letter and treatment relating to the classification of textile gun boot skins.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking New York Ruling Letter (NY) E89014, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of textile gun boot skins. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice. Notice of the proposed revocation was published on May 1, 2002, in Volume 36, Number 18, of the CUSTOMS BULLETIN. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse or for consumption on or after August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Shirley Greitzer, Textiles Branch: (202) 572–8823.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on May 1, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 18,

proposing to revoke one ruling, NY E 89014, dated December 1, 1999, and revoke any tariff treatment pertaining to the tariff classification of gun boot skins. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but which have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY E89014, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 963696. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise. HQ 963696, revoking NY E89014, and revoking any treatment relating to tariff classification, is set forth as the "Attachment" to this document.

Dated: June 11, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, June 11, 2002.

CLA–2 RR:CR:TE 963696 SG
Category: Classification
Tariff No. 6307.90.9889

MR. TIM PARSONS
PARSONS TRADING
5 Thunderbird Drive
Novato, CA 94949–5883

Re: Revocation of New York Ruling Letter (NY) E89014, dated December 1, 1999; Gun Boot Skin: Other Made Up Article of Textiles; Storage Bag, Not Traveling Bag; *Totes, Incorporated v. United States*, 18 C.I.T. 919, 865 F. Supp. 867 (1994), aff'd, 69 F.3d 495 (Fed. Cir. 1995).

DEAR MR. PARSONS:

This letter is in response to your letter dated December 27, 1999, in which you requested reconsideration of New York Ruling Letter (NY) E89014, issued on December 1, 1999, in which Customs classified a camouflage printed "gun boot skin" in subheading 4202.92.9026, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Trunks, * * *, gun cases, holsters and similar containers; traveling bags, * * *, sportsbags, * * * and similar containers * * *: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other, With outer surface of textile materials: * * * Other: Of man-made fibers." Your letter along with a sample was forwarded to this office for our reply. We have reviewed that ruling and have found it to be in error. Therefore, this ruling revokes NY E89014.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI, a notice was published on May 1, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 18, proposing to revoke NY E89014, dated December 1, 1999, and to revoke any tariff treatment pertaining to the tariff classification of gun boot skins. No comments were received in response to this notice.

Facts:

The merchandise at issue is described as a camouflage dressing for a Gun Boot that is permanently attached to an All Terrain Vehicle (ATV). The Gun Boot is used to hold a rifle/shotgun and is comprised of a hard plastic outer shell with a soft padded interior lining. The Gun Boot is opened by removing a pin directly behind the handle, and the whole "butt" portion comes off to reveal the stock of the rifle/shotgun. The Gun Boot Skin is comprised to two main pieces of textile material both shaped like a bag. One piece is approximately 40 inches long by 9 inches in width at its widest part (and 2½ inches in width at its narrowest); it would be used to slide over the "muzzle" end of the boot. The second piece is approximately 16 inches long by 9 inches in width at its widest part and 7 inches in width at its narrowest part; it would slip over the wider "butt" end of the gun boot. The two pieces are secured together by hook and loop closures and have sewn-in slots that are specifically located at the attachment points of the gun boot to the ATV. The articles are composed of 100 percent stretch polyester lycra knit fabric. At the top inside of the bags, there are a number of strips of Velcro®. We are advised that these strips help to keep the "skin" located most effectively as camouflage. Each bag also contains a slit opening near the narrow end. We understand these slots are specifically located at attachment points of the Gun Boot to the ATV. The Gun Boot Skin is merely designed to camouflage the Gun Boot and is not intended as a container. It is claimed that the material is very thin, stretchy, and would neither provide protection to a gun against knocks, water, or dirt. Nor is it intended to carry either a gun or the case; there is no form or handle attached to the Gun Skin, as the material is too light and would rip if it were used to carry a gun.

Issue:

Whether the merchandise is classified in heading 4202, HTSUS, as a traveling bag; in heading 8708, HTSUS, as a motor vehicle part or accessory; or in heading 6307, HTSUS, as an other made up textile article.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 4202, HTSUS, provides for:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

In order to warrant classification under heading 4202, HTSUSA, the gun boot skin must be found to share the fundamental characteristics attributable to containers of heading 4202, HTSUSA. In *Totes, Incorporated v. United States*, 18 C.I.T. 919, 865 F. Supp. 867 (1994), aff'd, 69 F.3d 495 (Fed. Cir. 1995), the Court of International Trade (CIT) examined the classification of automobile trunk organizers (described as bags or cases designed to store trunk necessities such as jumper cables, tire inflator, tools, antifreeze, oil, and other fluids, etc., in a neat and orderly manner) and the application of *ejusdem generis*, to determine whether the organizers were of the same class or kind of containers as the listed 4202 exemplars. The Court found significant disparity in the physical characteristics, purposes, and uses of the individual heading 4202 exemplars, but emphasized that the essential characteristics and purposes of all of the exemplars were to organize, store, protect and carry various items. The capability of the trunk organizers to carry—not to organize, store, and protect—was a central issue in the case. After having stipulated to the fact that the organizers had hefty web handles for easy carrying, the plaintiff subsequently attempted to minimize the organizers' carrying capacity and function. The Court, however, rejected any requirement that the principal design feature of an article classified as a "similar container" under heading 4202 be portability or transportation of the contents.

Like the trunk organizers, the subject textile article is not designed for the transportation of contents. The CIT in *Totes*, recognized that portability is usually an incidental purpose of jewelry boxes and certain tool chests classifiable in heading 4202, HTSUS, but noted that those containers nevertheless retained their primary uses to organize, store and protect articles. However, unlike the trunk organizers—which featured internal movable dividers by which a variety of items could be compartmentalized—the subject gun boot skin shares none of the essential characteristics and purposes of articles of heading 4202, i.e., to organize, store, protect and carry various items. We find that the clear absence of the essential characteristics of heading 4202 exemplars provides no basis upon which to classify the gun boot skin as a "similar container."

Among other goods, heading 8708, HTSUS, covers parts and accessories of motor vehicles. The EN to heading 8708 state that the heading covers parts and accessories of the motor vehicles of headings 8701 to 8705, provided that the parts and accessories fulfill both of the following conditions:

> (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles; and
> (ii) They must not be excluded by the provisions of the Notes to Section XVII.

Textile articles used to camouflage gun boots on ATVs are not excluded by the provisions of the Notes to Section XVII. To determine whether the gun boot skin is suitable for use solely or principally with a motor vehicle so as to be classified as a part or accessory, we look to a discussion of the term "part" in *United States v. Willoughby Camera Stores, Inc.* (hereinafter *Willoughby*), 21 C.C.P.A. 322 (1933). The case involved the classification of an imported tripod which was not solely used with cameras and had various other purposes. The Customs Court stated that a part "is an integral, constituent, or component * * * without which the article to which it is to be joined, could not function as such article." In

United States v. Pompeo (hereinafter *Pompeo*), 43 C.C.P.A. 9 (1955), the issue was whether an imported supercharger was properly considered a part of an automobile. The Government had argued that, because an automobile was able to function with or without it, the supercharger was not a part. The Court disagreed, focusing on the nature of the supercharger, which was "dedicated irrevocably for use upon automobiles," and held that the article was properly classified as a part of an automobile.

The article at issue here does not satisfy the requirements of a "part" under the standards of either *Willoughby* or *Pompeo*, or fulfill the conditions of the EN to heading 8708 for classification as a part or accessory. It is never "joined" to the ATV, is not actually used upon the automobile itself, and does not affect the vehicle's function. Since the bag is used only on the gun boot, it cannot be found to be suitable for use solely or principally with the vehicle. The gun boot skin is therefore not classified as a part or accessory of a motor vehicle. (But see NY 873356, issued April 21, 1992, and NY 864763, issued July 8, 1991, in which an automobile trunk cover and an article specifically designed and fitted to cover the windows and roof of a Chevrolet Corvette automobile, respectively, were classified under heading 8708, HTSUS. Unlike the subject textile article, however, each of those items was intended for attachment directly to, and suitable for use solely or principally with, a motor vehicle.)

Heading 6307, HTSUS, covers other made up textile articles, including dress patterns. The EN to heading 6307 indicate that the heading covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature. The EN indicate that the heading excludes travel goods (suitcases, rucksacks, etc.), shopping-bags, toilet-cases, etc., and all similar containers of heading 4202. The EN also state, in pertinent part, that the heading includes loose covers for motor-cars, domestic laundry or shoe bags and similar articles. In light of this fact and the foregoing discussion, we find that the gun boot skin is classified in subheading 6307.90.9889, HTSUSA.

Holding:

The Gun Boot Skin, a camouflage dressing for a gun boot permanently attached to an ATV is properly classified in subheading 6307.90.9889, HTSUSA, the provision for "Other made up articles, including dress patterns: Other: Other: Other, Other: Other." The general column one duty rate is 7 percent ad valorem.

NY E89014, issued on December 1, 1999, is hereby REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton

Senior Judges

Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon

(Slip Op. 02–53)

PEER BEARING CO., PLAINTIFF AND DEFENDANT-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND TIMKEN CO., DEFENDANT-INTERVENOR AND PLAINTIFF, AND L & S BEARING CO. AND SHANGHAI GENERAL BEARING CO., LTD., DEFENDANT-INTERVENORS

Consolidated Court No. 97–03–00419

(Dated June 5, 2002)

JUDGMENT

TSOUCALAS, *Senior Judge:* This Court having received and reviewed the United States Department of Commerce, International Trade Administration's ("Commerce") *Final Results of Redetermination Pursuant to Court Remand: Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China ("Remand Results")*, issued pursuant to the Court's order in *Peer Bearing Co. v. United States*, 25 CIT ____, 182 F. Supp. 2d 1285 (2001), and the responses by The Timken Company and Peer Bearing Company, and Commerce having complied with the Court's remand, it is hereby

ORDERED that the Remand Results filed by Commerce on March 26, 2002, are affirmed in their entirety; and it is further

ORDERED that since all other issues have been decided, this case is dismissed.

(Slip Op. 02–54)

TIMKEN CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND KOYO SEIKO CO., LTD., KOYO CORP. OF U.S.A., NTN BEARING CORP. OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORP., NTN BOWER, INC., AND NTN CORP., DEFENDANT-INTERVENORS

Court No. 98–12–03237

Plaintiff, The Timken Company ("Timken"), moves pursuant to USCIT R. 56.2 for judgment upon the agency record challenging the Department of Commerce, International Trade Administration's ("Commerce") final determination, entitled *Final Results of Antidumping Duty Administrative Reviews of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan ("Final Results")*, 63 Fed. Reg. 63,860 (Nov. 17, 1998).

Specifically, Timken contends that Commerce unlawfully: (1) refused to adjust constructed export price ("CEP") for indirect selling expenses reported by Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. (collectively "Koyo"), and NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, NTN Bower, Inc. and NTN Corporation (collectively "NTN"); (2) permitted NTN to exclude certain expenses attributable to non-scope merchandise from its reported United States indirect selling expenses; and (3) granted NTN a level of trade ("LOT") adjustment for export price ("EP") sales.

Held: Timken's 56.2 motion is denied.

[Timken's 56.2 motion is denied; case is dismissed.]

(Dated June 5, 2002)

Stewart and Stewart (Terence P. Stewart, William A. Fennell and *Patrick J. McDonough)* for Timken.

Robert D. McCallum, Jr., Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Michele D. Lynch* and *Richard P. Schroeder)*; of counsel: *John F. Koeppen*, Office of the Chief Counsel for Import Administration, United States Department of Commerce, for the United States.

Barnes, Richardson & Colburn (Donald J. Unger, Kazumune V. Kano, David G. Forgue and *Kristen S. Smith)* for NTN.

Powell, Goldstein, Frazer & Murphy LLP (Peter O. Suchman, Neil R. Ellis and *Elizabeth C. Hafner)* for Koyo.

OPINION

TSOUCALAS, *Senior Judge:* Plaintiff, The Timken Company ("Timken"), moves pursuant to USCIT R. 56.2 for judgment upon the agency record challenging the Department of Commerce, International Trade Administration's ("Commerce") final determination, entitled *Final Results of Antidumping Duty Administrative Reviews of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan ("Final Results")*, 63 Fed. Reg. 63,860 (Nov. 17, 1998).

Specifically, Timken contends that Commerce unlawfully: (1) refused to adjust constructed export price ("CEP") for indirect selling expenses reported by Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. (collec-

tively "Koyo"), and NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, NTN Bower, Inc. and NTN Corporation (collectively "NTN"); (2) permitted NTN to exclude certain expenses attributable to non-scope merchandise from its reported United States indirect selling expenses; and (3) granted NTN a level of trade("LOT") adjustment for export price ("EP") sales.

BACKGROUND

This case concerns: (1) the antidumping finding regarding tapered roller bearings ("TRBs"), four inches or less in outside diameter, and components thereof, from Japan, and (2) the 1987 antidumping duty order on TRBs and parts thereof, finished and unfinished, from Japan for the period of review ("POR") covering October 1, 1996, through September 30, 1997.[1] *See Final Results*, 63 Fed. Reg. at 63,860. On July 10, 1998, Commerce published the preliminary results of the subject reviews. *See Preliminary Results of Antidumping Duty Administrative Reviews of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan ("Preliminary Results")*, 63 Fed. Reg. 37,344. Commerce published the *Final Results* on November 17, 1998. *See* 63 Fed. Reg. at 63,860.

JURISDICTION

The Court has jurisdiction over this matter pursuant to 19 U.S.C. § 1516a(a) (1994) and 28 U.S.C. § 1581(c) (1994).

STANDARD OF REVIEW

In reviewing a challenge to Commerce's final determination in an antidumping administrative review, the Court will uphold Commerce's determination unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law * * *." 19 U.S.C. § 1516a(b)(1)(B)(i) (1994).

I. Substantial Evidence Test

Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). Substantial evidence "is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966) (citations omitted). Moreover, "[t]he court may not substitute its judgment for that of the [agency] when the choice is 'between two fairly conflicting views, even though

[1] Since the administrative review at issue was initiated after December 31, 1994, the applicable law is the antidumping statute as amended by the Uruguay Round Agreements Act ("URAA"), Pub. L. No. 103-465, 108 Stat. 4809 (1994) (effective January 1, 1995). *See Torrington Co. v. United States*, 68 F.3d 1347, 1352 (Fed. Cir. 1995) (citing URAA § 291(a)(2), (b) (noting effective date of URAA amendments)).

the court would justifiably have made a different choice had the matter been before it *de novo.'" American Spring Wire Corp. v. United States,* 8 CIT 20, 22, 590 F. Supp. 1273, 1276 (1984) (quoting *Penntech Papers, Inc. v. NLRB,* 706 F.2d 18, 22–23 (1st Cir. 1983) (quoting, in turn, *Universal Camera,* 340 U.S. at 488)).

II. Chevron Two-Step Analysis

To determine whether Commerce's interpretation and application of the antidumping statute is "in accordance with law," the Court must undertake the two-step analysis prescribed by *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984). Under the first step, the Court reviews Commerce's construction of a statutory provision to determine whether "Congress has directly spoken to the precise question at issue." *Id.* at 842. "To ascertain whether Congress had an intention on the precise question at issue, [the Court] employ[s] the 'traditional tools of statutory construction.'" *Timex V.I., Inc. v. United States,* 157 F.3d 879, 882 (Fed. Cir. 1998) (citing *Chevron,* 467 U.S. at 843 n.9). "The first and foremost 'tool' to be used is the statute's text, giving it its plain meaning. Because a statute's text is Congress' final expression of its intent, if the text answers the question, that is the end of the matter." *Id.* (citations omitted). Beyond the statute's text, the tools of statutory construction "include the statute's structure, canons of statutory construction, and legislative history." *Id.* (citations omitted); but *see Floral Trade Council v. United States,* 23 CIT 20, 22 n.6, 41 F. Supp. 2d 319, 323 n.6 (1999) (noting that "[n]ot all rules of statutory construction rise to the level of a canon, however") (citation omitted).

If, after employing the first prong of *Chevron,* the Court determines that the statute is silent or ambiguous with respect to the specific issue, the question for the Court becomes whether Commerce's construction of the statute is permissible. *See Chevron,* 467 U.S. at 843. Essentially, this is an inquiry into the reasonableness of Commerce's interpretation. *See Fujitsu Gen. Ltd. v. United States,* 88 F.3d 1034, 1038 (Fed. Cir. 1996). Provided Commerce has acted rationally, the Court may not substitute its judgment for the agency's. *See Koyo Seiko Co. v. United States,* 36 F.3d 1565, 1570 (Fed. Cir. 1994) (holding that "a court must defer to an agency's reasonable interpretation of a statute even if the court might have preferred another"); *see also IPSCO, Inc. v. United States,* 965 F.2d 1056, 1061 (Fed. Cir. 1992). The "[C]ourt will sustain the determination if it is reasonable and supported by the record as a whole, including whatever fairly detracts from the substantiality of the evidence." *Negev Phosphates, Ltd. v. United States,* 12 CIT 1074, 1077, 699 F. Supp. 938, 942 (1988) (citations omitted). In determining whether Commerce's interpretation is reasonable, the Court considers the following non-exclusive list of factors: the express terms of the provisions at issue, the objectives of those provisions and the objectives of the antidumping scheme as a whole. *See Mitsubishi Heavy Indus. v. United States,* 22 CIT 541, 545, 15 F. Supp. 2d 807, 813 (1998).

DISCUSSION

I. Commerce's Decision to Limit United States Indirect Selling Expenses to Those Expenses Specifically Associated With Commercial Activity in the United States

A. Background

The pre-URAA statute provided the reduction of exporter's sales price ("ESP") by the amount of "expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise." 19 U.S.C. § 1677a(e)(2)(1988). Although the statute was silent as to whether indirect selling expenses incurred outside the United States should be categorized as United States indirect selling expenses, Commerce chose to adjust United States price for such expenses. *See* 19 C.F.R. § 353.41(e)(2)(1994); ITA ANTIDUMPING MANUAL, § 7, at 11 (rev. ed. 1993).

As revised by the URAA, the statute states that CEP, the post-URAA equivalent to ESP, is to be reduced by the amount of any "expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States[:]" including "any selling expenses not deducted under subparagraph (A) [commissions], (B) [direct selling expenses], or (C) [selling expenses assumed by the seller on behalf of the purchaser]." 19 U.S.C. § 1677a(d)(1) and (d)(1)(D) (1994). In the *Final Results,* Commerce determined that

> [a]s [Commerce] stated in *[Final Results of Antidumping Duty Administrative Reviews and Termination in Part of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan,* 62 Fed. Reg. 11,825, 11,834] (Mar. 13, 1997), *[Final Results of Antidumping Duty Administrative Reviews of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan,* 63 Fed Reg. 2558, 2575 (Jan. 15, 1998), and *Final Results of Antidumping Duty Administrative Reviews of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom,* 62 Fed. Reg. 2081, 2124 (Jan. 15, 1997)], [Commerce] will deduct from CEP only those expenses associated with economic activities in the United States which occurred with respect to sales to the unaffiliated U.S. customer. [Commerce] found no information on the record for this review period to indicate that the export selling expenses for the respondents that were incurred in their respective home markets were associated with activities occurring in the United States.

63 Fed. Reg. at 63,868.

Therefore, since Koyo's and NTN's "selling expenses were not associated with economic activity in the United States[,] * * * [Commerce did not] adjust[] Koyo's or NTN's U.S. prices [for these indirect selling expenses]." *Id.*

B. Contentions of the Parties

Timken asserts that the URAA "made no substantive change in the statutory requirement that constructed export prices * * * be adjusted for indirect selling expenses." Timken's Mem. Supp. Rule 56.2 Mot. J. Agency R. ("Timken's Mem.") at 10; *see also* Timken's Reply Br. ("Timken's Reply") at 2. In particular, Timken claims that the statutory language of the new 19 U.S.C. § 1677a(d)(1) and the Statement of Administrative Action ("SAA")[2], H.R. Doc. 103–316, at 823, indicate that Congress intended for Commerce to continue the practice of including in United States indirect selling expenses the home market selling expenses attributable to export sales.[3] *See* Timken's Mem. at 10–12; *see also* Timken's Mem. at 11 (citing Sen. Rep. No. 412, 103d Cong., 2d Sess. 65 (1994)), Timken's Reply at 3–4. Timken further argues that the "old law, *i.e.*, pre-URAA, referred only to expenses 'incurred by or for the account of the exporter in the United States,' but the URAA broadened this language to include adjustment for expenses 'incurred by or for the account of the producer or exporter, or the affiliated seller in the United States.'" Timken's Reply at 4 (emphasis omitted); *see also* Timken's Mem. at 12. Therefore, Timken maintains that Congress, by referring to expenses incurred by "producers or exporters," codified Commerce's prior practice under pre-URAA. *See* Timken's Reply at 4. Accordingly, Timken requests that the Court reexamine its decision in *Timken Co. v. United States ("Timken 1998")*, 22 CIT 621, 16 F. Supp. 2d 1102 (1998), and remand this issue to Commerce so that it may adjust CEP for indirect selling expenses incurred in the home market on account of United States sales (that is, export selling expenses reported by Koyo and NTN). *See id.* at 2, 4.

Relying on this Court's decision in *Timken 1998*, 22 CIT 621, 16 F. Supp. 2d 1102, Commerce responds that it properly did not adjust CEP for indirect selling expenses reported by Koyo and NTN because the new statutory language (that is, 19 U.S.C. § 1677a(d)(1)), does not define the types of expenses to be included as United States indirect selling expenses. *See* Def.'s Mem. Opp'n Pl.'s Mot. J. Agency R. ("Def.'s Mem.") at 2, 8–10. Moreover, Commerce states that "'it is clear from the SAA that

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[2] The SAA represents "an authoritative expression by the Administration concerning its views regarding the interpretation and application of the Uruguay Round agreements." H.R. Doc. 103–316, at 656 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040. "[I]t is the expectation of the Congress that future Administrations will observe and apply the interpretations and commitments set out in this Statement." *Id.*; *see also* 19 U.S.C. § 3512(d) (1994) ("The statement of administrative action approved by the Congress * * * shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application").

[3] Timken states that

> [t]he URAA did not intend to change Commerce's approach to export selling expenses. Indeed, the SAA states that Section 772(d)(1)(C) [that is, § 1677a(d)(1)(C)] provides for the deduction of selling expenses which are assumed by the seller on behalf of the buyer. In practice, Commerce has treated these expenses in the same manner as the direct selling expenses in section 772(d)(1)(B) [that is, § 1677a(d)(1)(B)]. Their separate treatment in the statute is intended merely to provide a more precise definition, **and not to change the calculation of export price or constructed export price.** * * *
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> * * * * * * *
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> [D]irect expenses and assumptions of expenses incurred in the foreign country on sales to the affiliated importer will form a part of the circumstances of sale adjustment. Moreover, **Commerce's practice with respect to assumptions by the seller of the buyer's selling expenses and commissions will remain the same.**

Timken's Reply at 2–3 (emphasis in original) (quoting H.R. Doc. 103–316, at 824, 828).

under the new statute [Commerce] should deduct from CEP only those expenses associated with economic activities in the United States.'" Def.'s Mem. at 8 (quoting *Final Results*, 63 Fed. Reg. at 63,868); *see also* Def.'s Mem. at 7 (citing 19 C.F.R. § 351.402(b)(1998)).

Koyo and NTN generally agree with Commerce and argue that: (1) the new statutory language of § 1677a(d)(1) and the rules of statutory construction make it clear that no adjustment should be made for indirect selling expenses incurred in Japan; and (2) Commerce's practice of limiting indirect selling expenses to those specifically associated with commercial activity in the United States is in accordance with the SAA and *Timken 1998*, 22 CIT 621, 16 F. Supp. 2d 1102.[4] *See* Koyo's Resp. Timken's Mot. J. Agency R. ("Koyo's Resp.") at 3–6; NTN's Resp. Mem. Timken's July 1, 1999, Mem. Supp. Rule 56.2 Mot. J. Agency R. ("NTN's Resp.") at 2–5.

C. Analysis

Timken 1998, 22 CIT at 625–26, 16 F. Supp. 2d at 1106, and *Micron Tech., Inc. v. United States*, 23 CIT 208, 210–12, 40 F. Supp. 2d 481, 483–85 (1999), *aff'd*, 243 F.3d 1301, 1314 (Fed. Cir. 2001), explain the validity of Commerce's practice of limiting United States indirect selling expenses to those expenses incurred in the United States. *See NTN Bearing Corp. of Am. v. United States*, 26 CIT ___, ___, 186 F. Supp. 2d 1257, 1320–22 (2002). Neither the pre-URAA statute nor the newly-amended statute address whether United States indirect selling expenses incurred outside the United States should be categorized as United States indirect selling expenses. *See Timken 1998*, 22 CIT at 625–26, 16 F. Supp. 2d at 1106; *Micron Tech.*, 23 CIT at 212, 40 F. Supp. 2d at 485.

Because Commerce's practice of limiting United States indirect selling expenses to those expenses incurred in the United States and the parties' arguments are practically identical to those presented in *Timken 1998* and *Micron Tech.*, the Court adheres to its reasoning in *Timken 1998* and *Micron Tech.* Accordingly, the Court finds that Commerce's decision to limit United States indirect selling expenses to those expenses incurred in the United States is supported by substantial evidence and is in accordance with law.

II. NTN's Exclusion of Certain Expenses for Non-Scope Merchandise From United States Selling Expenses

A. Background

In the underlying review, NTN excluded certain expenses attributable to non-scope merchandise from its reported United States indirect selling expenses. *See* NTN's Resp. at 5. In particular,

> [b]ecause certain of NTN's U.S. expenses were incurred solely for non-scope merchandise, in order to ensure an accurate allocation of its U.S. expenses, NTN first removed all such expenses from the

[4] The Court notes that, in this case, Koyo is concerned with the antidumping finding regarding TRBs, four inches or less in outside diameter, and components thereof, from Japan. *See* Koyo's Resp. Timken's Mot. J. Agency R. at 2 n.1.

> pool of U.S. [indirect selling expenses]. * * * The remaining U.S. [indirect selling expenses] which were incurred for either scope or non-scope merchandise, but which could not be specifically tied to either scope or non-scope products, were then allocated to scope and non-scope merchandise.

Final Results, 63 Fed. Reg. at 63,867.

In accepting NTN's methodology of reporting its United States indirect selling expenses, Commerce: (1) stated that in past TRB and anti-friction bearing ("AFB") cases, it has verified NTN's methodology and has found it to be reasonable; and (2) determined that

> NTN's approach for adjusting its U.S. [indirect selling expenses] remains unchanged for the current review, and there is no information on the record of this review which should call into question [Commerce's] practice of accepting NTN's approach * * *.

Id.

Commerce also explained how it eliminated the possibility of distortion in NTN's methodology when

> Commerce calculated a ratio of sales of scope merchandise to all sales. * * * Commerce * * * adjusted NTN's reported final indirect selling expense by adding or subtracting various expenses to arrive at a final indirect selling expense. Next, Commerce multiplied that total expense by the ratio of scope-to-total products.

Def.'s Mem. at 13 (citing Def.'s Proprietary Ex. 2).

B. Contentions of the Parties

Timken argues that Commerce improperly permitted NTN to exclude certain expenses attributable to non-scope merchandise from NTN's reported United States indirect selling expenses.[5] *See* Timken's Mem. at 6–7, 13–15 (proprietary version); Timken's Reply at 4–8 (proprietary version); *Final Results*, 63 Fed. Reg. at 63,867. In particular, Timken asserts that NTN's adjustment of its allocated pool of indirect United States selling expenses "was unreasonable, resulted in distorted allocations, and was not supported by substantial evidence" because NTN excluded certain expenses attributable to the non-scope merchandise for one of its subsidiaries and then allocated the remaining expenses to all of NTN's scope and non-scope United States sales. Timken's Reply at 8; *see* Timken's Mem. at 13–14 (proprietary version). Timken also maintains its assertion that one of NTN's subsidiaries' certain "expenses attributed to non-scope merchandise is disproportionate to the amount of

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[5] Timken asserts that the record does not support Commerce's conclusion that "'certain of NTN's U.S. expenses were incurred solely for non-scope merchandise.'" Timken's Mem. at 13 (quoting *Final Results*, 63 Fed. Reg. at 63,867); *see also* Timken's Mem. at 6–7, 13 (proprietary version); Timken's Reply at 4–5, 8 (proprietary version). In particular, Timken argues that a pertinent financial statement indicates that a relevant company was reimbursed by other companies for the certain expenses at issue. *See* Timken's Mem. at 13 (proprietary version). NTN maintains that "this conclusion simply does not follow from the [weight of the] stated facts." NTN's Resp. at 6. The Court will not entertain this argument because the Court's "role is limited to deciding whether [Commerce's] decision is *unsupported* by substantial evidence on the record, or otherwise not in accordance with law." *Matsushita Elec. Indus. Co. v. United States*, 750 F.2d 927, 936 (Fed. Cir. 1984) (emphasis supplied); *see also American Spring Wire*, 8 CIT at 22, 590 F. Supp. at 1276 ("[t]he court may not substitute its judgment for that of the [agency] when the choice is 'between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo*'") (quoting *Penntech Papers*, 706 F.2d at 22–23 (quoting, in turn, *Universal Camera*, 340 U.S. at 488)).

non-scope sales * * * is not mere conjecture" as Commerce maintains.[6] Timken's Reply at 7 (proprietary version).

Commerce responds that 19 U.S.C. § 1677a(d)(1994), "as amended by the URAA, continues to be silent on the question of allocation methods[,]" thus granting Commerce a substantial right of interpretation. Def.'s Mem. at 11. Commerce also points out that it "has verified the method used by NTN * * * on several occasions without [observing any] discrepancy." *Id.* at 12 (citing *Final Results of Antidumping Duty Administrative Reviews and Termination in Part of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan,* 63 Fed. Reg. 20,585, 20,595 (Apr. 27, 1998); *Final Results of Antidumping Duty Administrative Reviews of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan,* 63 Fed. Reg. 2558, 2572 (Jan. 15, 1998); and *Final Results of Antidumping Duty Administrative Reviews of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan,* 58 Fed. Reg. 64,720, 64,726 (Dec. 9, 1993)). Commerce further states that it eliminated the possibility of distortion in NTN's methodology when Commerce: (1) calculated a pertinent ratio; (2) "adjusted NTN's reported final indirect selling expense"; and (3) "multiplied that total expense by the ratio of scope-to-total products." Def.'s Mem. at 13.

NTN supports Commerce's conclusion. Replying to Timken's claim that "Commerce accepted a reporting methodology for certain U.S. indirect selling expenses which caused a distortion in NTN's reported expenses[,]" NTN's Resp. at 5 (citing Timken's Mem. at 6–7, 13–15), NTN contends that "[t]he sole basis for [Timken's] * * * claim is a hypothetical concocted by Timken which is not factually similar to the case before the Court."[7] NTN's Resp. at 6. NTN maintains that its allocation methodology is not distortive and "Commerce's decision to accept NTN's reported pool of allocated expenses for U.S. indirect selling expenses is reasonable, and in accordance with law. * * *" *Id.* at 5.

C. Analysis

The Court upholds Commerce's decision to allow NTN to exclude certain expenses attributable to non-scope merchandise from its United States selling expenses since it is in accordance with law. The Court notes that 19 U.S.C. § 1677a(d) is silent on the question of allocation

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[6] Commerce asserts that the "record does not show what nonscope merchandise was stored in the warehouse at issue." Def.'s Mem. at 13. Therefore, the Court agrees with Commerce that it is "impossible to say whether the storage charges are disproportionate to the sales of the non-scope merchandise." *Id.*

[7] To illustrate its contention that NTN's exclusion of certain expenses attributable to non-scope merchandise from NTN's United States selling expenses is distortive, Timken provides hypothetical examples. *See* Timken's Mem. at 14 (proprietary version); Timken's Reply at 6–7 (proprietary version). The Court is not persuaded by Timken's hypotheticals since Timken fails to use evidence on the record to illustrate that NTN's allocation methodology was distortive.

methods and thus grants Commerce considerable discretion. Under 19 C.F.R. § 351.401(g)(1998),

> [Commerce] may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided [Commerce] is satisfied that the allocation method used does not cause inaccuracies or distortions.

In addition, pursuant to 19 C.F.R. § 351.401(g)(4),

> [Commerce] will not reject an allocation method solely because the method includes expenses incurred, or price adjustments made, with respect to sales of merchandise that does not constitute subject merchandise or a foreign like product (whichever is applicable).

Based on a careful examination of the record and on the regulatory language of 19 C.F.R. § 351.401(g) and (g)(4) that grants Commerce considerable discretion in choosing allocation methods, the Court sustains Commerce's decision to accept NTN's United States selling expenses as reasonable, supported by substantial evidence and in accordance with law. *See Skidmore v. Swift & Co.*, 323 U.S. 134, 139–40 (1944).

III. Commerce's Granting of a Level of Trade Adjustment for EP Sales

A. Background

1. Statutory Background

The URAA contains a specific provision regarding adjustments to normal value ("NV") for differences in levels of trade. The statute provides for NV to be based on:

> the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, *to the extent practicable, at the same level of trade as the export price or constructed export price.*

19 U.S.C. § 1677b(a)(1)(B)(i)(1994) (emphasis supplied). The statute also provides for an LOT adjustment to NV under the following conditions:

> The price described in [§ 1677b(a)(1)(B)(1994), *i.e.*, NV,] shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price or constructed export price and the price described in [§ 1677b(a)(1)(B)] (other than a difference for which allowance is otherwise made under [§ 1677b(a)(1994)]) that is shown to be wholly or partly due to a difference in level of trade between the export price or constructed export price and normal value, if the difference in level of trade—
>
> (i) involves the performance of different selling activities; and
>
> (ii) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

> In a case described in the preceding sentence, the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.

19 U.S.C. § 1677b(a)(7)(A).

In sum, to qualify for an LOT adjustment to NV, a party has the burden to show that the following two conditions have been satisfied: (1) the difference in LOT involves the performance of different selling activities; and (2) the difference affects price comparability. *See* SAA, H.R. Doc. 103–316, at 829 (stating that "if a respondent claims [an LOT] adjustment to decrease normal value, as with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such adjustment"); *see also NSK Ltd. v. United States*, 190 F.3d 1321, 1330 (Fed. Cir. 1999) (noting that a respondent bears the burden of establishing entitlement to an LOT adjustment).

2. Factual Background

During this review, Commerce applied the following LOT methodology. *See Final Results*, 63 Fed. Reg. at 63,868–69; *Preliminary Results*, 63 Fed. Reg. at 37,347–48. In accordance with 19 U.S.C. § 1677b(a)(1)(B)(i), Commerce first calculates NV based on exporting-country (or third-country) sales, to the extent practicable, at the same LOT as the United States (EP and CEP) sales. *See Final Results*, 63 Fed. Reg. at 63,868. "When [Commerce is] unable to find comparison sales at the same LOT as the EP or CEP sales, [it] compare[s] the [United States] sales to sales at a different LOT in the comparison [home or third-country] market. *Id.*

With respect to the LOT methodology for EP sales, Commerce first calculates EP "on the basis of the starting prices of sales to the United States." *Id.* "Where home market prices serve[] as the basis of NV, [Commerce] determine[s] the NV LOT based on starting prices in the NV market." *Id.*

Commerce then proceeds to determine whether sales in the home market exist that are at the same LOT as the EP sales. In making such a determination, Commerce examines whether the home market sales are at different stages in the marketing process than EP or CEP, that is, Commerce "review[s] and compare[s] distribution systems, including selling functions, classes of customer, and the extent and level of selling expenses for each claimed LOT." *Final Results*, 63 Fed. Reg. at 63,868. If the EP sales and the NV sales are at a different LOT, and the differences in LOT affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the equivalent LOT of the export transaction, Commerce will make an LOT adjustment pursuant to 19 U.S.C. § 1677b(a)(7)(A). *See id.* at 63,869. If there is no pattern of consistent price differences, no adjustment is made. *See id.*

Applying this methodology, Commerce determined that for NTN

> there were three home market LOTs and two (one EP and one CEP) LOTs in the United States. Because there were no home market

> LOTs equivalent to NTN's CEP LOT, and because NV for NTN represented a price more remote from the factory than the CEP, [Commerce] made a CEP offset adjustment to NV in [Commerce's] CEP comparisons. [Commerce] also determined that NTN's EP LOT was equivalent to one of its LOTs in the home market. Because [Commerce] determined that there was a pattern of consistent price differences due to differences in LOTs, [Commerce] made a LOT adjustment to NV for NTN in [Commerce's] EP comparisons where the [United States] EP sale matched to a home market sale at a different LOT.

Id. at 63,869.

Moreover, in the *Final Results*, Commerce observed that,

> [a]s stated in *[Final Results of Antidumping Duty Administrative Reviews of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom*, 63 Fed. Reg. 33,320, 33,331 (June 18, 1998)], differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in LOTs. While there are a few individual selling functions that vary, [Commerce] determine[s] that these functions, by themselves, do not offset the many similarities of the selling functions performed by the respondent at the EP and home market LOTs. Although [Commerce] ha[s] determined that there is a qualitatively minimal difference in selling functions between one of the home market LOTs and the EP Lot, the two LOTs are similar enough to be considered the same LOT, such that that home market LOT can be used in determining whether there is a pattern of consistent price differences between that LOT and the LOT at which certain EP sales are made.

Id.

B. Contentions of the Parties

Timken contends that Commerce improperly granted NTN an LOT adjustment under § 1677b(a)(7)(A) for EP sales. *See* Timken's Mem. at 7–8, 15–16. In particular, Timken maintains that the LOT adjustment under § 1677b(a)(7)(A) "presumes * * * that there exists a home market level of trade that is comparable to a U.S. level of trade." Timken's Reply at 9. Timken argues that since: (1) "[t]he record does not demonstrate that price differences between NTN's home market sales at different levels of trade affect their comparability to NTN's U.S. EP sales," Timken's Mem. at 16; and (2) "[t]here is no demonstration that the EP sales are at a level of trade that is comparable to sales at any level of trade in the home market," *id.*, "there is no basis in the record for Commerce to calculate a LOT adjustment for NTN's EP sales." Timken's Reply at 11.

Commerce responds that it properly granted an LOT adjustment for NTN's EP sales. *See* Def.'s Mem. at 14–16. Commerce notes that pursuant to § 1677b(a)(7)(A) Commerce

> determines that sales are made at different LOTs if they are made at different marketing stages (or the equivalent). Substantial dif-

> ferences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.

Id. at 15–16 (quoting 19 C.F.R. § 551.412(c)(2) [sic]).[8]

Commerce maintains that it acted in accordance with 19 U.S.C. § 1677b(a)(7)(A) and 19 C.F.R. § 351.412(c)(2) when Commerce determined that: (1) "the differences in selling activities ('functions,') * * * between the equivalent [home market] LOT and EP LOT were minimal"; and (2) "Commerce used the [home market] LOT to determine whether there was a pattern of consistent price differences between that LOT and the LOT at which certain sales [were] made." Def.'s Mem. at 16.

NTN generally agrees with Commerce and maintains that "[b]ecause the law and the record support matching these levels of trade [that is, NTN's home market LOT and NTN'S United States EP LOT] for comparison purposes," Commerce's granting of the LOT adjustment is not unreasonable because there are "sales functions [that] are performed for United States EP sales which are not performed in the home market." NTN's Resp. at 7–8.

C. Analysis

The Court disagrees with Timken that Commerce improperly granted NTN an LOT adjustment under § 1677b(a)(7)(A) for EP sales. "In the absence of a statutory mandate to the contrary, Commerce's actions must be upheld as long as they are reasonable." *Timken Co. v. United States*, 23 CIT 509, 516, 59 F. Supp. 2d 1371, 1377 (1999); *see also Chevron*, 467 U.S. at 844–45.

During the review at issue, Commerce determined that NTN's EP LOT was equivalent to NTN's home market LOT. *See Final Results*, 63 Fed. Reg. at 63,869. In granting NTN an LOT adjustment pursuant to § 1677b(a)(7)(A), Commerce determined that the equivalent home market LOT and EP LOT had minimal differences in selling activities and "determined that there was a pattern of consistent price differences due to differences in LOTs." *Id.*

Although "zero" differences in selling functions (that is, a perfect comparison) between the home market LOT and EP LOT would make the two LOTs perfectly comparable, the Court finds that § 1677b(a)(7)(A) grants Commerce discretion to find the necessary degree of comparability in situations where differences are de minimus.

Accordingly, the Court sustains Commerce's decision to grant NTN an LOT adjustment for EP as reasonable, in accordance with law and supported by substantial evidence.

CONCLUSION

The Court finds that Commerce acted properly in: (1) refusing to adjust CEP for indirect selling expenses reported by Koyo and NTN;

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[8] The Court assumes that the correct citation is 19 C.F.R. § 351.412(c)(2)(1998).

(2) permitting NTN to exclude certain expenses attributable to non-scope merchandise from NTN's reported United States indirect selling expenses; and (3) granting NTN an LOT adjustment for EP sales. Commerce's determination is affirmed.

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